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MEMO ENDORSED

August 5, 2008

VIA OVERNIGHT MAIL

Hon. Kenneth M. Karas
United States District Judge
United States Courthouse
Chambers 533
300 Quarropas Street
White Plains, New York 10601-4150

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Re: Jeffrey Deskovic v. City of Peekskill, et al.
07 Civ. 8150 (KMK)(GAY)
Linda McGarr, et al. v. City of Peekskill, et al.
07 Civ. 9488(KMK)(GAY)

Request for reconsideration of this court's July 29, 2008 endorsement

Dear Judge Karas:

This office is of counsel to Westchester County Attorney Charlene Indelicato and represents defendants Westchester County, Louis Roh, Millard Hyland and George Bolen in the above-captioned matters.

We are in receipt of this court's endorsement dated July 29, 2008 which endorsement was electronically filed on August 1, 2008. Although not specifically stated, it is apparent from the court's endorsement that the request by defendant Bolen for a pre-motion conference in anticipation of moving to dismiss the first amended complaints pursuant to Federal Rules of Civil Procedure, Rule 12 (b)(6) was denied. On behalf of defendant Bolen,

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we respectfully request that the court reconsider its determination and schedule a pre-motion conference or alternatively, set a briefing schedule for the motion to dismiss in these two matters. This court, in its July 29, 2008 endorsement, stated "...plaintiffs have alleged that Bolen was involved in an post-indictment investigation that would be outside the scope of any immunity claim." It is defendant Bolen's position that whether his actions constitute investigatory or trial preparation activity, is a legal issue which should be resolved at the earliest possible stage of this litigation.

While defendant acknowledges that the issuance of an indictment does not mean that subsequent activity could not be considered investigative, it is defendant's position that assuming the facts in the first amended complaints to be true, that Bolen's actions are protected by absolute prosecutorial immunity.

Since defendant Bolen believes a legal issue is presented on the issue of absolute immunity, should this court deny the motion to dismiss, then defendant Bolen would be entitled to an immediate appeal of that determination. No immediate appeal lies from this court's directive allowing plaintiff Deskovic to amend his complaint.

It is therefore respectfully requested that the court reconsider its July 29, 2008 endorsement order and either schedule a pre-motion conference or alternatively, set a briefing schedule in order to allow defendant Bolen to move to dismiss the first amended complaints of plaintiffs Deskovic and McGarr.

We thank the court for its attention to this matter.

Very truly yours,
OXMAN TULIS KIRKPATRICK
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Stuart E. Kahan

cc:

The Court will hold a conference
on September 16, 2008, at 3:00

SO ORDERED
KENNETH M. KARAS U.S.D.J.
8/12/08

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